

MAR 27 1946

CHARLES ELMORE JOSEPH
CLERK

IN THE
Supreme Court of the United States

October Term, 1945

No. **1007-1008**

In Bankruptcy

MICHAEL P. JORDAN,

Petitioner,

VS.

FEDERAL FARM MORTGAGE CORPORATION,
Et Al.,

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT AND BRIEF
IN SUPPORT THEREOF**

M. L. DONOVAN,
Omaha National Bank Bldg.,
Omaha, Nebraska,

G. P. NORTH,
Karaach Block,
Omaha, Nebraska,

B. BROWN,
Creston, Iowa,

Counsel for Petitioner.



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MICHAEL P. JORDAN,

Petitioner,

vs.

**FEDERAL FARM MORTGAGE CORPORATION, FED-
ERAL LAND BANK OF OMAHA, STOCK YARDS
NATIONAL BANK, SOUTH OMAHA; UNION
CENTRAL LIFE INSURANCE COMPANY, A. L.
JOHNSON, B. J. BERGESEN, THOMAS McCANN,
JOHN DRAYTON,**

Respondents.

—o—o—
**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

—o—o—
*To the Honorable Harlan F. Stone, Chief Justice, and to
the Associate Justices, of the Supreme Court of the
United States:*

Your Petitioner, Michael P. Jordan, respectfully petitions this Honorable Court for a Writ of Certiorari to review the decision and judgment of the United States Circuit Court of Appeals for the Eighth Circuit, rendered in the above entitled cause on December 27, 1945, which

decision affirms the judgment of the United States District Court for the Southern District of Iowa, Southern Division, and holds that Petitioner is not a farmer within the definition of Section 75r of the Bankruptcy Act.

CIRCUIT COURT'S OPINION

The opinion of the Circuit Court of Appeals has been reported in Vol. 152, Fed. (2d), page 642, and is printed herein in the Transcript together with the opinion of said District Court.

RESPONDENTS

The interest of the various respondents named above are each that of secured creditors and are set out in the Debtor's Petition filed by Petitioner in the District Court asking relief under Section 75 of the Bankruptcy Act (Tr. 1, 2, 3, 4).

SUMMARY STATEMENT OF MATTERS INVOLVED

This cause involves the proper construction of Section 75r of the Bankruptcy Act, 11 U. S. C. A., Section 203r, and whether or not appellant is a farmer within the definition of said section and the facts appearing in the record herein.

Two Appeals, First Appeal

The decision of the Circuit Court involves two appeals from said District Court.

The records in the first appeal show that Petitioner, about 67 years of age, was born and reared in Cherry County, Nebraska, and upon attaining his majority began the purchase of lands and in time acquired a ranch of about 10,000 acres (Tr. 4), and became the owner of some 1,200 head of cattle thereon. During the years of drought,

1934, 1935 and 1936, through the purchase of feed, he became indebted, mortgaged his cattle and, upon default, all of same were sold, his ranch mortgaged and, upon default in payment of interest, 12 per cent, foreclosure begun thereupon. Petitioner, on about August 13, 1942, filed in the District Court of the United States for the District of Nebraska a Debtor's Petition under Section 75 of the Bankruptcy Act, wherein said District Court found he was not a farmer and dismissed his petition which, on appeal to the Circuit Court, Eighth Circuit, was affirmed (opinion reported in Vol. 139, Fed. (2d), 203, the Court holding therein that because of his leasing his ranch he was no longer a farmer, although he was such prior thereto. Subsequent thereto he purchased three farms in Iowa (Tr. 2, 3, 4), and subsequently on March 20, 1945, again filed his Debtor's Petition under said Section 75 in the District Court, Southern District of Iowa, which was approved and referred to George C. Figgins, Conciliation Commissioner. Upon hearing of motions of all creditors to dismiss, alleging said Petitioner not to be a farmer, the Commissioner denied said motions, adjudged and decreed Petitioner to be a farmer and denied dismissal (Tr. 20, 21, 22). Amended Debtor's Petition was filed May 4, 1945 (Tr. 22).

Petition for review was filed by all creditors, hearing had thereon in said District Court on April 26, 1945, and ruling entered that Petitioner was not a farmer and proceedings dismissed—"dismissed for lack of jurisdiction." The ruling was made on the assumption and holding that no change had occurred in Petitioner's status since the former decision of the Circuit Court and he was, therefore, not a farmer (ruling in Tr. 24).

Petitioner perfected his appeal to Circuit Court; hearing had and on December 27, 1945, opinion filed, affirmed,

judgment and decree of District Court (Vol. 152, Fed. (2d) 642, and set out in Transcript, pp.—).

The opinion cites as authority *Mulligan vs. Federal Land Bank*, Vol. 129, Fed. (2d), 436, and the opinion in former case of Petitioner stating that, one "although once a farmer abandons that vocation and leases his farm to another is not a farmer." No reference is made to the undisputed record that Petitioner was forced to rent his ranch to avoid loss of title by Sheriff's Sale and that all money received was paid into Court, judgment satisfied and sale and loss of ranch avoided (Tr. 13).

Second Appeal

After perfecting his appeal to the Circuit Court from ruling of District Court of May 4, 1945 (first appeal, *supra*), Petitioner filed in said District Court his Petition for Rehearing and for proceedings under Chapter XII of the Bankruptcy Act, alleging:

First. That no adjudication was made other than that Petitioner was not a farmer.

Second. Wholly failed to consider or adjudicate Petitioner's right to proceedings other than under said Section 75.

Third. Committed error in dismissing Petitioner's proceedings in lieu of ordering his estate otherwise administered under Bankruptcy Act. Petitioned the Court that the dismissal be set aside, other issues adjudicated and estate be administered under Chapter XII of the Bankruptcy Act.

On hearing, ruling was entered October 8, 1945, that said Petitions were filed too late, that cause was dismissed

and Court was without jurisdiction as the cause was no longer pending in said Court. Petition dismissed and appeal perfected to Circuit Court. On motion, the two appeals were merged and submitted as one and the record in the second appeal was submitted on typewritten transcript. In the opinion of the Circuit Court filed December 27, 1945, it is ordered that the Petitions for a new trial and for proceedings under Chapter XII were filed too late, being filed after appeal had been taken from the former ruling and that the District Court was without jurisdiction to hear same. Judgment of District Court was affirmed.

JURISDICTION

The jurisdiction of this Court is sought to be invoked under the provisions of Section 347 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. 347), said decision being contrary to law and in conflict with the decisions of this Court and of other Circuit Courts and in conflict with prior opinions of its own.

STATUTE INVOLVED

“For the purpose of this section and section 22 (b) the term ‘farmer’ includes, not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer, and a farmer shall be deemed a resident of any county in which such operations occur.”

REASONS RELIED ON FOR ALLOWANCE OF WRIT**I.**

The decision that the Petitioner was not a farmer is in conflict with several decisions of this Court and with several of its own decisions and is in direct conflict with the plain and positive definition of a farmer in said Section 75r and the facts shown in the record in this case.

II.

It is contrary to law and in conflict with all authoritative decisions in holding that an enforced leasing of the real estate and an enforced abandonment of farming operations effects a change of vocation. The record here shows, without dispute, that Petitioner's ranch was being offered at Sheriff's Sale and only by an immediate lease was he able to secure the funds, make payment of the judgment, avoid a Sheriff's Sale and the loss of title to his ranch, the record showing that all of said rental so received was paid into Court, whereby said judgment or judgments were satisfied. (See Tr. 12-13.)

III.

Committed error in holding that the former decision of said Circuit Court, that Petitioner was not a farmer, was in substance *res adjudicata*, the proceedings here being an entirely new proceedings on a new record showing the acquirement of a large amount of additional land (Tr. 4), showing subsequent thereto he had devoted his entire time to work on the ranch or in an attempt to refinance it, built new fences, set out 1,000 trees, purchased paint, repaired buildings, fences and other improvements (Tr. 12), paid insurance (Tr. 11), purchased five windmills (Tr. 13), paid taxes (Tr. 10), whereby there was a new

and different record before the Court, nor was the Court bound to reaffirm a prior erroneous decision.

IV.

Committed error in denying jurisdiction to hear the Petition for a Rehearing, wherein the Court was asked to adjudicate various issues not previously adjudicated, including the right of Petitioner to have his estate administered on in bankruptcy, otherwise and under Section 75, and committed error in refusing to entertain or consider a direct or positive petition for administration under Chapter XII. None of said issues were in any way considered or adjudicated in the original opinion and as Courts in Bankruptcy have no terms and have jurisdiction to grant rehearings, set aside former rulings and orders so long as the bankruptcy proceedings remain pending.

Wherefore, your Petitioner prays that a Writ of Certiorari issue under the Seal of this Court directed to the United States Circuit Court of Appeals, Eighth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the above entitled cause, being Numbers 13,117 and 13,194 on its docket, to the end that this cause may be reviewed and determined by this Honorable Court, as provided for by Section 347, Title 28, U. S. C. A.; and that the judgment herein of said Circuit Court of Appeals be reversed by this Honorable Court; and for such further relief as this Court may deem proper.

MICHAEL P. JORDAN,
Petitioner.

By R. BROWN,
Counsel for Petitioner.